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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,839	02/11/2004	Ludwig Busam	CM2725MQ	3030

27752 7590 10/17/2007  
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EXAMINER
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BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/776,839

Applicant(s)

BUSAM ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Request for Continued Examination***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 July 2007 has been entered.

### ***Claim Objections***

Claim 8 is objected to because of the following informalities:

Claim 8 depends from cancelled claim 7. For the purposes of examination against the prior art, claim 8 is herein interpreted as depending from claim 1.

### ***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

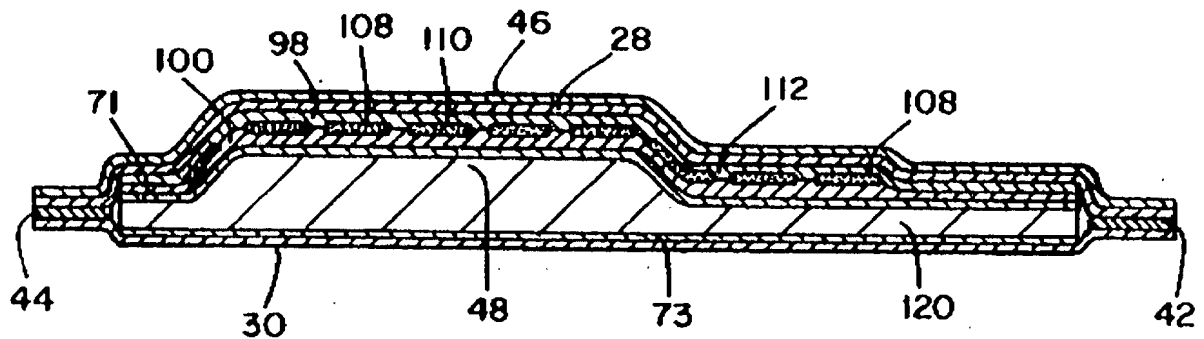
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tanzer *et al.* (US 5,425,725 A; hereinafter “Tanzer”).

Regarding claim 1, Tanzer teaches an absorbent core (32) useful for an absorbent article (10) comprising a substrate layer (100), said substrate layer (100) comprising a first surface and a second surface, said absorbent core (32) further comprising a discontinuous layer of absorbent material (110), said absorbent material (110) comprising an absorbent polymer material, said absorbent material optionally comprising an absorbent fibrous material and said absorbent fibrous material not representing more than about 20 weight percent of the total weight of the absorbent polymer material (110), said discontinuous layer of absorbent material (110) comprising a first surface and a second surface, said absorbent core (32) further comprising a layer of thermoplastic material (98), said layer of thermoplastic material (98) comprising a first surface and a second surface wherein said second surface of said discontinuous layer of absorbent material (110) is in at least partial contact with said first surface of said substrate layer (100) and wherein portions of said second surface of said layer of thermoplastic material (98) are in direct contact with said first surface of said substrate layer (100) and portions of said second surface of said layer of thermoplastic material (98) are in direct contact with said first surface of said discontinuous layer of absorbent material (110);

wherein said absorbent core (32) comprises at least two substrate layers (100, 48), wherein said substrate layers (100, 48) do not contact each other (col. 13, lines 45-61; col. 26, line 46-col. 27, line 28)(see fig. 2, *infra*).

**FIG. 2**

Regarding the fibrous material, this limitation is recited as optional, and the limitation is herein interpreted as being optional and not required for the reference to anticipate the claim.

Regarding claim 2, Tanzer teaches that the thermoplastic material includes a hot melt adhesive (col. 40, lines 61-68; col. 43, lines 43-50).

Regarding claims 3 and 4, Tanzer teaches that the thermoplastic material is fiberized and/or net-like (col. 13, lines 45-61).

Regarding claim 5, Tanzer teaches that the absorbent polymer includes particles (col. 27, lines 20-28).

Regarding claim 9, Tanzer teaches at least one substrate layer (100) and one cover layer (28, 46).

***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 6, 8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanzer.

Tanzer does not expressly disclose the specifically claimed ranges of basis weight or performance vectors.

Optimization of ranges of parameters within prior art ranges or through routine experimentation is not sufficient to patentably distinguish the invention over the prior art. MPEP § 2144.05. One of ordinary skill in the art would have recognized that increasing the basis weight of absorbent material would increase the absorbent capacity of the absorbent core, while reducing it would result in less cost or bulkiness. One of ordinary skill in the art would have also recognized that minimizing the strike through time would result in faster absorption of liquid in

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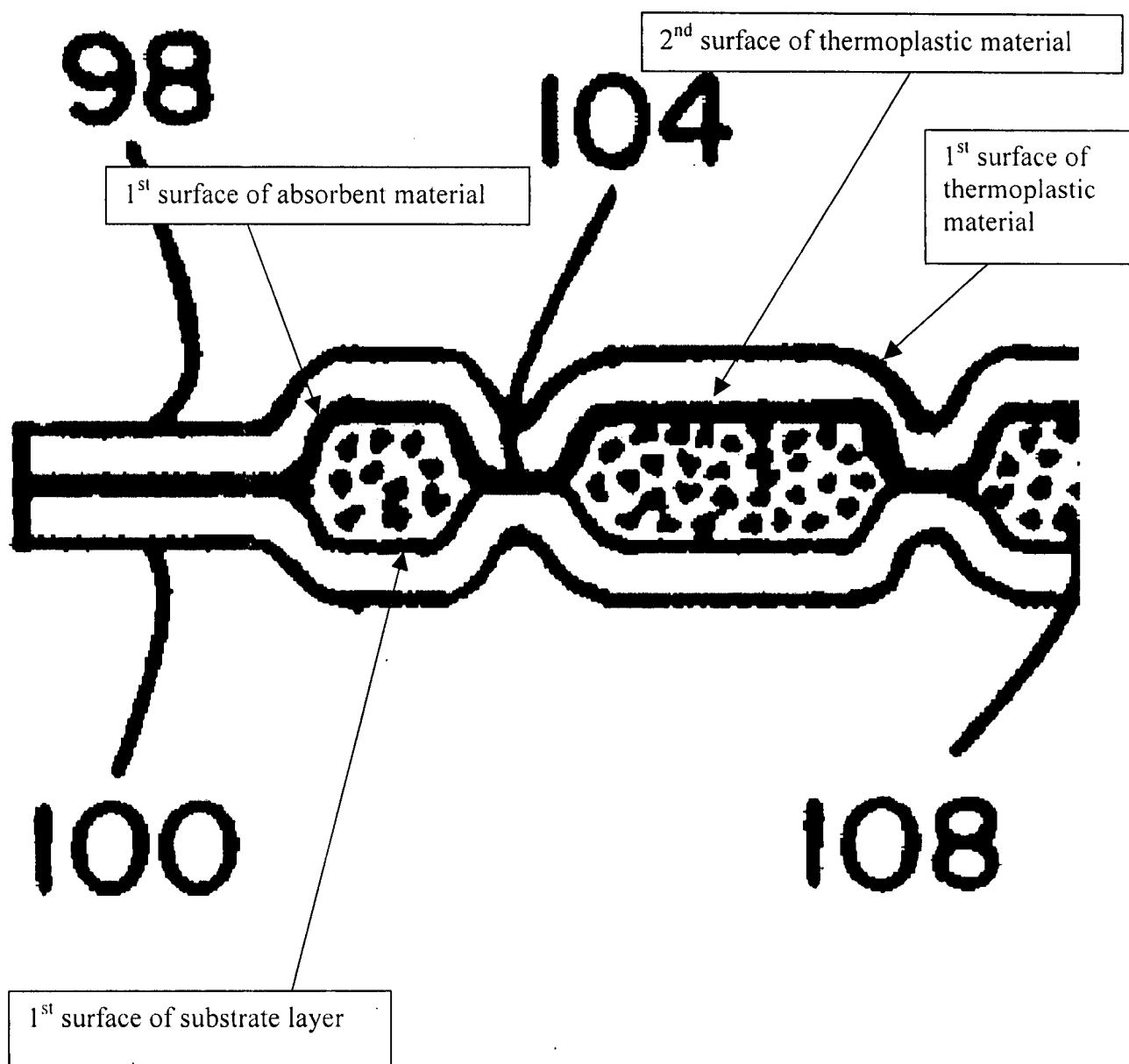
the finished product. Additionally, one of ordinary skill in the art would have recognized the benefit of optimizing the hydrophilicity of various layers depending on their function as uptake, surge management or retention. Thus these parameters are result-effective variables and as such, it would have been obvious to optimize them.

### *Response to Arguments*

Applicant's arguments filed 20 July 2007 have been fully considered but they are not persuasive.

Applicants assert that Tanzer does not teach a layer of thermoplastic material comprising a first surface and a second surface wherein portions of the second surface of the layer of thermoplastic material are in direct contact with the first surface of the substrate layer and portions of the second surface of the layer of thermoplastic material are in direct contact with the first surface of the discontinuous layer of absorbent material.

This argument is not persuasive because Tanzer discloses a layer of thermoplastic material (98) comprising a first surface and a second surface wherein portions of the second surface of the layer of thermoplastic material (98) are in direct contact (104) with the first surface of the substrate layer (100) and portions of the second surface of the layer of thermoplastic material (98) are in direct contact with the first surface of the discontinuous layer of absorbent material (110)(see annotated section of figure 7, *infra*).



Applicants assert that Tanzer does not an absorbent core having at least two substrate layers that do not contact each other. This argument is not persuasive because Tanzer teaches an absorbent core (32) having two substrate layers (48, 100) that do not contact each other (see fig. 2, supra).



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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
12 October 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

